

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CODY VALJALO, an individual; and
DYLON VALJALO, an individual,

Plaintiffs,

v.
AUSTIN TAYLOR, an individual; and
CLU LLC, a Florida limited liability
company,

Defendants.

No. 2:23-cv-02390 WBS AC

FINDINGS AND RECOMMENDATIONS

This matter is before the court on plaintiffs' motion for default judgment. ECF No. 15. The motion was referred to the undersigned pursuant to E.D. Cal. R. 302(c)(19). This motion was set for hearing on the papers on May 1, 2024. ECF No. 16. Defendants did not file any response to the motion, nor have they appeared in this case in any way. For the reasons set forth below, the recommends plaintiffs' motion be GRANTED, and that judgment be entered in favor of plaintiffs.

I. Relevant Background

Plaintiffs filed their complaint on October 19, 2023, alleging breach of contract, breach of the covenant of good faith and fair dealing, fraudulent misrepresentation, negligent misrepresentation, constructive fraud, fraudulent concealment, promissory fraud, promissory estoppel, unjust enrichment, and equitable estoppel. ECF No. 1 at 1. Plaintiffs allege jurisdiction under 28 U.S.C. § 1332. Plaintiffs are graphic designers residing in Portola, California. Id. at 2.

1 Plaintiffs allege that at all relevant times, defendants knew that plaintiffs resided in Portola,
2 California, and solicited the loans and contracts at issue in the instant matter while plaintiffs
3 resided in California. Id. Defendant Austin Taylor (“Taylor”) is alleged to be an individual
4 residing in Eldersburg, Maryland. Taylor is a social media personality and entrepreneur in the
5 digital asset and digital artwork industries, operating under the alias “DNP3.” Defendant CLU
6 LLC (“CLU”) is an administratively dissolved Florida limited liability company with a registered
7 office at 18851 Northeast 29th Avenue, Suite #700, Aventura, Florida 33180. Corporate records
8 from Florida indicate that CLU was administratively dissolved on September 23, 2022. Id. at 3-4.

9 The complaint alleges that plaintiffs first became acquainted with defendants in June of
10 2019 when they were hired to create digital artwork for Taylor’s social media promotions, CLU’s
11 website, and other nascent non-fungible token (“NFT”) projects, including “GoobersNFT.” Id. at
12 4. In September of 2021, the parties entered an agreement that included a creator royalty paid to
13 plaintiffs; plaintiffs allege that while they were paid in connection with their digital artwork
14 services, they were never paid the agreed royalties. Id. at 5. Beginning July 2022, defendants
15 began seeking loans from plaintiffs. Id. On July 10, 2022, Taylor asked plaintiffs to borrow
16 approximately 174 ETH¹ (then-valued at \$203,506.61) to seed a “liquidity pool” related to a
17 digital asset created by defendants, called “BITS.” Id. Six days later, on July 16, 2022,
18 defendants repaid plaintiffs with interest, sending 184 ETH (then-valued at \$227,070.18) back to
19 the digital asset wallet from which plaintiffs sent defendants the July 10, 2022 loan of 174 ETH.
20 Id. at 6.

21 Having established a level of trust with the plaintiffs by repaying this loan, defendants
22 subsequently proceeded to solicit plaintiffs to loan them all the funds in plaintiffs’ digital asset
23 wallet. Id. at 6. Less than one month later, on August 14, 2022, Taylor contacted plaintiffs again
24 on Discord and asked for an additional loan of 65 ETH (then-valued at \$125,959.16). Plaintiffs
25 obliged and sent defendants 65 ETH (then-valued at \$125,959.16) to a digital asset wallet address
26 provided by Taylor (“Loan 1”). Id. A few hours after Taylor received the funds from Loan 1, on

27
28 ¹ “ETH’ is a digital cryptocurrency asset native to the Ethereum blockchain. ETH is frequently
used as a means of payment in the digital asset and NFT industry.” ECF No. 1 at 4.

1 August 15, 2022, Taylor asked plaintiffs in writing over Discord for another 65 ETH (then-valued
2 at \$125,957.56), representing that Taylor had “just realized today is pay roll day” and needed to
3 pay his employees who, upon information and belief, work for CLU. Plaintiffs completed a
4 transfer of this second tranche of 65 ETH (then-valued at \$125,957.56) within fifteen minutes of
5 this request (“Loan 2”). Id. On August 28, 2022, Taylor told plaintiffs over Discord that he had
6 exhausted the 130 ETH (then-valued at \$251,916.72) from Loans 1 and 2 by paying vendors and
7 CLU staff, and he needed another 40 ETH (then-valued at \$59,739.17) to get through the week.
8 Id. Plaintiffs sent Taylor 40 ETH (then-valued at \$59,739.17) within five minutes of Taylor’s
9 request (“Loan 3”). Id. at 7.

10 Plaintiffs allege that Taylor acknowledged that as a combination of Loans 1, 2, and 3, he
11 owed them 170 ETH (then-valued at \$311,655.89) (collectively, the “Loans”). Id. at 7. On
12 September 14, 2022, instead of apologizing for failing to timely repay Loans 1, 2, and 3, Taylor
13 asked plaintiffs to loan him the last 15 ETH (then-valued at \$24,600) that plaintiffs had left in
14 their publicly visible digital asset wallet. Id. Plaintiffs began to grow suspicious of Taylor’s
15 repeated requests and refused this request. Id. Unbeknownst to plaintiffs, Taylor caused CLU to
16 be administratively dissolved on September 23, 2022. Id. On January 2, 2023, nearly four
17 months after defendants had successfully convinced plaintiffs to send Loans 1, 2, and 3, Taylor
18 admitted to plaintiffs that he had lied to them about the Loans’ purposes and further confessed
19 that he lost their money gambling. Id. at 7. Plaintiffs also performed additional work for the
20 GoobersNFT project by taking on a leadership role in the project since January 2023, when
21 plaintiffs told Taylor that members of the GoobersNFT community felt that he should step aside.
22 Id. at 9-10.

23 Plaintiffs allege they have sustained significant damages as a result of the failures of
24 defendants Taylor and CLU. First, plaintiffs were deprived of at least 40% share of the royalties
25 that defendants promised to give them, which amount to no less than 29.79 ETH (presently
26 valued at \$46,527, but having greater value at the time the Royalties became due to plaintiffs).
27 Id. at 11. Second, plaintiffs have been and continue to be deprived of their original 170 ETH
28 (cumulatively valued at the times of each Loan at \$311,655.11). Id. at 11. Plaintiffs have been

1 penalized and will continue to be penalized as a result of defendants' failure to repay the Loans
 2 due to defendants' self-described gambling problem. Id. Third, plaintiffs also incurred damages
 3 related to the time and effort spent assuming the responsibilities of Taylor and CLU in the
 4 GoobersNFT project. Plaintiffs allege they owed compensation in an amount to be proven at
 5 trial, but no less than \$24,000, which is a minimum hourly rate for each hour spent on their
 6 efforts. Id. Taken together, plaintiff allege they have lost no less than \$382,182.11 as a result of
 7 defendants' actions to date and will continue to incur damages into the future. Id.

8 II. Motion

9 Plaintiffs move for default judgment, seeking a total of \$1,113,818.65 in damages. ECF
 10 No. 15 at 11. This figure is broken down as either (i) \$795,584.75 in special damages and
 11 \$362,233.90 in punitive damages; or (ii) \$467,410.39 in special damages and \$646,408.26 in
 12 punitive damages, depending largely on whether certain losses are measured by the value of ETH
 13 at the time of the transactions or at present. Id.; see also C. Valjalo Decl. (ECF No. 15-4) at ¶ 22;
 14 D. Valjalo Decl. (ECF No. 15-5) at ¶ 22.² Defendants have not appeared or responded in any way
 15 to the motion.

16 III. Analysis

17 A. Legal Standard

18 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party
 19 against whom a judgment for affirmative relief is sought who fails to plead or otherwise defend
 20 against the action. See Fed. R. Civ. P. 55(a). However, “[a] defendant’s default does not
 21 automatically entitle the plaintiff to a court-ordered judgment.” PepsiCo, Inc. v. Cal. Sec. Cans,
 22 238 F.Supp.2d 1172, 1174 (C.D. Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924-25 (9th
 23 Cir. 1986)); see Fed. R. Civ. P. 55(b) (governing the entry of default judgments). Instead, the
 24 decision to grant or deny an application for default judgment lies within the district court’s sound

25 ² Plaintiffs’ motion cites to their declarations to support the damages numbers, though the court
 26 notes that the damages listed in the declarations do not add up to the total damages amount
 27 requested. C. Valjalo Decl. (ECF No. 15-4) at ¶ 22; D. Valjalo Decl. (ECF No. 15-5) at ¶ 22.
 28 Further, plaintiffs ask for post-judgment interest in the motion, but provide no legal support or
 argument related to this request. ECF No. 15 at 11. Accordingly, the undersigned does not
 address post-judgment interest.

1 discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). In making this
2 determination, the court may consider the following factors:

3 (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's
4 substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake
5 in the action; (5) the possibility of a dispute concerning material facts; (6) whether
6 the default was due to excusable neglect; and (7) the strong policy underlying the
Federal Rules of Civil Procedure favoring decisions on the merits.

7 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Default judgments are ordinarily
8 disfavored. Id. at 1472.

9 As a general rule, once default is entered, well-pleaded factual allegations in the operative
10 complaint are taken as true, except for those allegations relating to damages. TeleVideo Sys., Inc.
11 v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing Geddes v. United Fin.
12 Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); see also Fair Housing of Marin v.
13 Combs, 285 F.3d 899, 906 (9th Cir. 2002). Although well-pleaded allegations in the complaint
14 are admitted by a defendant's failure to respond, "necessary facts not contained in the pleadings,
15 and claims which are legally insufficient, are not established by default." Cripps v. Life Ins. Co.
16 of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d 1386, 1388
17 (9th Cir. 1978)); accord DIRECTV, Inc. v. Huynh, 503 F.3d 847, 854 (9th Cir. 2007) ("[A]
18 defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law")
19 (citation and quotation marks omitted); Abney v. Alameida, 334 F.Supp.2d 1221, 1235 (S.D. Cal.
20 2004) ("[A] default judgment may not be entered on a legally insufficient claim."). A party's
21 default conclusively establishes that party's liability, although it does not establish the amount of
22 damages. Geddes, 559 F.2d at 560; cf. Adriana Int'l Corp. v. Thoeren, 913 F.2d 1406, 1414 (9th
23 Cir. 1990) (stating in the context of a default entered pursuant to Federal Rule of Civil Procedure
24 37 that the default conclusively established the liability of the defaulting party).

25 B. The Eitel Factors

26 1. Factor One: Possibility of Prejudice to Plaintiff

27 The first Eitel factor considers whether the plaintiff would suffer prejudice if default
28 judgment is not entered, and such potential prejudice to the plaintiff weighs in favor of granting a

1 default judgment. See PepsiCo, Inc., 238 F.Supp.2d at 1177. Here, default was entered against
2 defendants (ECF Nos. 8 at 11) by the Clerk of Court, and defendants have not participated in this
3 litigation. Plaintiffs would suffer prejudice if the court did not enter a default judgment because it
4 would be without recourse for recovery. Accordingly, the first Eitel factor favors the entry of
5 default judgment.

6 2. Factors Two and Three: Merits of Claims and Sufficiency of Complaint

7 The merits of plaintiffs' substantive claims and the sufficiency of the complaint are
8 considered here together because of the relatedness of the two inquiries. The court must consider
9 whether the allegations in the complaint are sufficient to state a claim that supports the relief
10 sought. See Danning, 572 F.2d at 1388; PepsiCo, Inc., 238 F.Supp.2d at 1175. Here, the merits
11 of the claims and sufficiency of the complaint favor entry of default judgment.

12 Plaintiffs' complaint sets forth 10 claims for relief: (i) breach of contract; (ii) breach of the
13 covenant of good faith and fair dealing; (iii) fraudulent misrepresentation; (iv) negligent
14 misrepresentation; (v) constructive fraud; (vi) fraudulent concealment; (vii) promissory fraud;
15 (viii) promissory estoppel; (ix) unjust enrichment; and (x) equitable estoppel. The motion for
16 default judgment seeks judgment in plaintiffs' favor and an award of damages only on the
17 "exemplary claims" of breach of contract, fraudulent misrepresentation, and unjust enrichment.
18 ECF No. 15 at 8.

19 a. Breach of Contract

20 The elements of breach of contract are: "(1) the contract, (2) plaintiff's performance or
21 excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff."
22 Reichert v. Gen'l Ins. Co. of Am., 68 Cal. 2d 822, 830 (Cal. 1968). The complaint alleges that
23 contracts existed between plaintiffs and defendants as to the loans that plaintiffs provided to
24 defendants and for the 5 ETH fee per loan, that plaintiffs fulfilled their obligations under the
25 agreement by providing the funds, and defendants failed to repay the loans as agreed, damaging
26 plaintiffs. ECF No. 1, ¶¶ 19–38, 55, 56, 58–65. Plaintiffs also pled that they entered a
27 contractual agreement with defendants in September 2021 whereby plaintiffs would receive 40%
28 of defendants' royalties from the sales related to their digital artwork, that they performed these

1 services, and that defendants received royalties as a percentage of trading volume but failed to
 2 pay plaintiffs their promised share, damaging plaintiffs. Id. at ¶¶ 14, 18, 54, 56, 57, 59–65.
 3 Plaintiffs have adequately stated a breach of contract claim.³

4 b. Fraudulent Misrepresentation

5 The elements of fraud are (1) a misrepresentation (false representation, concealment, or
 6 nondisclosure); (2) knowledge of falsity (or scienter); (3) intent to defraud, i.e., to induce
 7 reliance; (4) justifiable reliance; and (5) resulting damage. See Lazar v. Superior Court, 12
 8 Cal.4th 631, 638 (Cal. 1996). Plaintiffs have specifically alleged that defendants misrepresented
 9 both the reasons the loans were requested and defendants' ability to repay them. Loan 1 was
 10 requested on the false basis that defendant's cryptocurrency exchange account "got locked for 30
 11 days," which Taylor later admitted was a fabrication. Loan 2 was requested on the false grounds
 12 that additional funds were needed to make payroll. Loan 3 was requested on the false basis that
 13 the proceeds of Loans 1 and 2 had gone to pay vendors and employees, and that further operating
 14 funds were needed for the business. In reality, Taylor sought the funds to pay his own gambling
 15 debts and enable further gambling. Taylor also falsely represented that anticipated sales and
 16 pending projects would enable prompt repayment of the loans. Plaintiffs relied on these
 17 representations in making the loans. ECF No. 1, ¶¶ 23-29, 33-34. In sum,

18 Plaintiffs trusted Defendants and relied upon Taylor's repeated
 19 representations about the ways in which he expected to earn enough
 20 ETH from his business ventures to repay them within the timeframe
 21 he proposed when he asked for the Loans. When soliciting the funds
 22 from Plaintiffs, Taylor intentionally did not disclose that the loaned
 23 ETH would be used for gambling or speculation. To the contrary,
 24 Taylor fabricated a series of lies to induce Plaintiffs into bailing him
 25 out of a self-inflicted treacherous financial position. In so doing,

26 ³ The court notes that plaintiffs did not provide any written evidence of these contracts; there are
 27 no emails or communications between the parties showing agreement, only the sworn
 28 declarations of the plaintiffs that the agreements were made. ECF Nos. 4 and 5. The court notes
 that it did consider whether California's statute of frauds would bar the contracts but concluded
 that because the statute of frauds is a waivable affirmative defense it does not apply here, where
 defendants have not appeared or raised the defense. "The statute of frauds is treated as a rule of
 evidence; if not raised by the party to be charged, it is waived." Griffin v. Green Tree Servicing,
 LLC, 166 F. Supp. 3d 1030, 1045 (C.D. Cal. 2015). In any event, the unjust enrichment theory
 addressed *infra* provides an alternative basis for recovery of the funds at issue on the loans and
 royalties issues.

1 Taylor effectively stole \$311,655.11 worth of ETH from Plaintiffs.

2 Id., ¶ 37.

3 These facts amply demonstrate misrepresentation, knowledge of falsity, intent to defraud,
4 justifiable reliance; and resulting damage. Plaintiffs have adequately stated their fraud claim.

5 c. Unjust Enrichment

6 The elements of unjust enrichment are a “receipt of a benefit and unjust retention of the
7 benefit at the expense of another.” Elder v. Pac. Bell Tel. Co., 205 Cal.App.4th 841, 857 (2012).
8 Unjust enrichment is not an independent cause of action, but provides for restitution under a
9 quasi-contractual recovery theory where there is not a true contract but plaintiff alleges that a
10 defendant nonetheless has a legal or equitable obligation to return benefits received. See
11 Melchoir v. New Line Productions, Inc., 106 Cal.App.4th 779, 793 (2003). Plaintiffs’ unjust
12 enrichment claim rests on the loans plaintiffs provided to defendants, the royalties defendants
13 promised but did not pay to plaintiffs, and the services plaintiffs were forced to take on after
14 defendants’ publicly admitted fraud.

15 To the extent that plaintiffs base their unjust enrichment claim on the failure to repay
16 loans, this theory provides an alternative basis for recovery if the existence of a true contract is
17 not adequately established. The loans provided by plaintiffs plainly constitute a benefit to
18 defendants, and the failure to repay them constitutes unjust retention of benefits to which
19 defendants are not entitled. Accordingly, defendants were unjustly enriched and restitution is
20 appropriate.

21 The allegations regarding royalties are similarly sufficient to demonstrate unjust
22 enrichment: defendants received the benefit of an automatically-generated 7.5% “creator royalty”
23 on a total GoobersNFT trading volume of 993 ETH, had promised a 40% share of those royalties
24 to plaintiff, and retained plaintiff’s share. See ECF No. 1, ¶ 15, 18. Here too, unjust enrichment
25 provides a basis for recovery even in the absence of an enforceable contract.

26 The undersigned reaches a different conclusion as to the services plaintiff provided in
27 managing the NFT beginning in January 2023. Plaintiffs pled that they had “no choice” but to
28 take control of the GoobersNFT from defendant Taylor after he publicly admitted fraud, and that

1 he accepted their services but did not compensate them for the same. ECF No.1, ¶¶ 39–52, 122–
2 132. However, plaintiffs made the decision to assume control of the NFT in full view of the facts
3 of the situation, after defendants’ insolvency had been revealed, and they provided their services
4 knowingly and voluntarily. The complaint does not adequately explain how Taylor and CLU
5 received benefits from plaintiff’s voluntary provision of services *after* Taylor’s “ouster” and
6 CLU’s administrative dissolution. Accordingly, the allegations of the complaint do not establish
7 that defendants were unjustly enriched.

8 The undersigned concludes that plaintiffs have adequately stated a basis for recovery on
9 an unjust enrichment theory as to the loans and royalties, but not as to their provision of services
10 in taking control of GoobersNFT.

11 3. Factor Four: The Sum of Money at Stake in the Action

12 Under the fourth Eitel factor, the court considers the amount of money at stake in relation
13 to the seriousness of defendant’s conduct. The sum of money at stake here is significant, though
14 insofar as it is connected directly to the contract and breaches, it is not unreasonable. This factor
15 weighs in favor of default judgment.

16 4. Factor Five: Possibility of Dispute Concerning Material Facts

17 The facts of this case are relatively straightforward, and plaintiff has provided the court
18 with well-pleaded allegations supporting its claims and affidavits in support of its allegations.
19 Here, the court may assume the truth of well-pleaded facts in the complaint (except as to
20 damages) following the clerk’s entry of default and, thus, there is no likelihood that any genuine
21 issue of material fact exists. See, e.g., Elektra Entm’t Group Inc. v. Crawford, 226 F.R.D. 388,
22 393 (C.D. Cal. 2005) (“Because all allegations in a well-pleaded complaint are taken as true after
23 the court clerk enters default judgment, there is no likelihood that any genuine issue of material
24 fact exists.”); accord Philip Morris USA, Inc., 219 F.R.D. at 500; PepsiCo, Inc., 238 F.Supp.2d at
25 1177.

26 5. Factor Six: Whether Default Was Due to Excusable Neglect

27 Upon review of the record before the court, there is no indication that the default was the
28 result of excusable neglect. See PepsiCo, Inc., 238 F.Supp.2d at 1177. Plaintiffs served the

1 defendants with the summons and complaint. ECF No. 6. Plaintiffs served defendant by mail
2 with notice of its application for default judgment. ECF No. 15 at 10. Despite ample notice of
3 this lawsuit and plaintiffs' intention to seek a default judgment, defendants failed to defend
4 themselves in this action. Thus, the record supports a conclusion that the defendants have chosen
5 not to defend this action, and not that the default resulted from any excusable neglect.
6 Accordingly, this Eitel factor favors the entry of a default judgment.

7 6. Factor Seven: Policy Favoring Decisions on the Merits

8 “Cases should be decided upon their merits whenever reasonably possible.” Eitel, 782
9 F.2d at 1472. However, district courts have concluded with regularity that this policy, standing
10 alone, is not dispositive, especially where a defendant fails to appear or defend itself in an action.
11 PepsiCo, Inc., 238 F.Supp.2d at 1177; see also Craigslist, Inc. v. Naturemarket, Inc., 694
12 F.Supp.2d 1039, 1061 (N.D. Cal. Mar. 5, 2010). Accordingly, although the court is cognizant of
13 the policy favoring decisions on the merits – and consistent with existing policy would prefer that
14 this case be resolved on the merits – that policy does not, by itself, preclude the entry of default
15 judgment.

16 7. Conclusion: Propriety of Default Judgment

17 Upon consideration of all the Eitel factors, the court concludes that plaintiffs are entitled
18 to the entry of default judgment against defendant. What remains is the determination of the
19 amount of damages to which plaintiff is entitled.

20 C. Terms of Judgment

21 Plaintiffs seek damages related to (i) the amounts they loaned to defendants and were not
22 repaid; (ii) the agreed fees for those loans; (iii) royalties defendants agreed to pay plaintiffs that
23 were not paid; (iv) fees for plaintiffs' services provided; (v) an accounting of the foregoing based
24 on the present value of the digital assets due to plaintiff; and (vi) prejudgment interest at the legal
25 rate.

26 1. Loan Amounts, Fees, and Prejudgment Interest

27 Plaintiff Dylon Valjalo submitted a sworn declaration reciting the initial values of the
28 loans and the present values of the loans. ECF No. 15-5 at 3. Plaintiff Cody Valjado submitted a

1 substantively similar declaration. ECF No. 15-4. As discussed further below, the court finds that
 2 the actual value loaned, plus prejudgment interest on that value, is the appropriate measure of
 3 damages. The loan values, at the time of contracting, are as follows: Loan 1, \$125,959.16; Loan
 4 2, \$125,957.56; Loan 3, \$59,739.17. Id. The declaration states that loan fees totaled a value of
 5 \$27,645.00. Id. The court finds reimbursement of these loan amounts appropriate, in the total
 6 amount of \$339,300.89. As discussed further below, the court declines to award the asserted
 7 “present values” of the loans because there is no indication that the loan agreement contemplated
 8 repayment at any increased value beyond a typical interest rate, and it is clear that the loans were
 9 intended to be repaid in the very short term.

10 “In diversity actions, state law determines the rate of prejudgment interest, and post
 11 judgment interest is governed by federal law.” Am. Tel. & Tel. Co. v. United Computer Sys.,
 12 Inc., 98 F.3d 1206, 1209 (9th Cir. 1996). California regulates prejudgment interest awards by
 13 statute. See Cal. Civ. Code §§ 3287; 3289. Prejudgment interest is meant to compensate the
 14 plaintiff for the “accrual of wealth” that could have been produced during the period of loss.
 15 Great W. Drywall, Inc. v. Roel Const. Co., 166 Cal. App. 4th 761, 767-768 (2008). California
 16 law provides for interest at a rate of 10 percent per annum in contract cases with liquidated
 17 damages. Cal. Civ. Code § 3289. The loans at issue were entered into in August 2022 (ECF No.
 18 1 at 6); using the date of this order, 21 months of annual interest totals \$64,597.02. The total
 19 liquidated damages for breach of contract is thus \$403,897.91.

20 2. Royalties

21 Plaintiffs assert they entered into an agreement to receive 40% of the royalties generated
 22 from the secondary market sales of all Goobers NFTs. ECF No. 15-5 at 2. Plaintiffs submitted a
 23 sworn declaration that defendants’ royalty agreement, from which their percentage was intended
 24 to be drawn, was 7.5% of total sales revenue from secondary market sales. Id. The royalty
 25 payments owed to plaintiffs using the ETH value at the time of the transaction amounts to
 26 \$46,527. Id. at 5. The court should award that amount. See id.

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28 ////

1 3. Fees for Service

2 Plaintiffs seek compensation in the amount of \$24,000 for time spent taking over the
 3 GoobersNFT project. As explained above in discussion of the unjust enrichment issue, plaintiffs
 4 have not demonstrated their entitlement to these fees. Plaintiffs assert that they “felt an informal
 5 ownership over the project” and therefore took over GoobersNFT when Taylor admitted to using
 6 investor funds on gambling. Plaintiffs’ decision to take over the project is not the direct result
 7 defendants’ misrepresentations; it was a decision made by plaintiffs after the fraudulent conduct
 8 had been revealed. Plaintiffs do not indicate that they entered any compensation arrangement
 9 with defendants for taking over the NFT. ECF No. 15-5 at 3-4. Plaintiffs are not entitled to
 10 payment for this work as a part of this lawsuit.

11 4. Accounting of Present Value of Digital Assets

12 Plaintiffs ask the court to value damages based on the present value of the digital assets
 13 due to plaintiffs. ECF No. 15 at 10. Plaintiffs argue that the loans were issued in ETH, the value
 14 of which has changed substantially over the past two years (for example, plaintiffs allege the
 15 value of the first 65 ETH loan in September of 2021 was \$125,959.16, and the value of 65 ETH
 16 as of April 2024 was \$233,187.50). ECF No. 15-5 at 3. Plaintiffs provide no caselaw or legal
 17 argument supporting their assertion that the court should award damages based on the current
 18 value of the cryptocurrency.⁴

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⁴ The court’s own research revealed one non-binding but informative opinion from the Superior Court of Delaware, which addressed the relatively novel question, “[w]hen the consideration to be paid on a contract is in cryptocurrency and the contract is breached, how does the Court calculate the judgment to be entered?” Diamond Fortress Techs., Inc. v. EverID, Inc., 2022 WL 1114528, at *5 (Del. Super. Ct. Apr. 14, 2022). The Diamond Fortress court concluded that cryptocurrency is a security and applied the “New York Rule” . . . which is “a judicially-created breach-of-contract remedy for reckoning ‘damages where stock or ‘properties of like character’ were converted, not delivered according to contractual or other legal obligation, or otherwise improperly manipulated’ and calculates damages by ‘the highest intermediate value reached by the [security] between the time of the wrongful act complained of and a reasonable time thereafter, to be allowed to the party injured to place himself in the position he would have been in had not his rights been violated.’” Id. Because plaintiffs recognized their injury within a month following the breach, and because the agreements were clearly intended to be short term in nature, using this calculation would not alter the result in this case.

1 Regardless, California law “limits contract damages to those reasonably within the
 2 contemplation of the parties as a probable result of a breach at the time the contract was formed.”
 3 Brandon & Tibbs v. George Kevorkian Accountancy Corp., 226 Cal. App. 3d 442, 457 (1990).
 4 The California Civil Code states that “[n]o damages can be recovered for a breach of contract
 5 which are not clearly ascertainable in both their nature and origin.” Cal. Civ. Code § 3301. Here,
 6 plaintiffs made the initial loan on August 14, 2022. ECF No. 1 at 6. The breach was allegedly
 7 fully realized and admitted to by the defendants no later than January 2, 2023, though plaintiffs
 8 acknowledge they had “grown suspicious” and had cause to recognize the breach by September
 9 14, 2022, when Taylor asked for and was denied a fourth loan. Id. at 7-8. Though the time of
 10 intended repayment was not specifically stated, it is clear from the complaint that the parties
 11 intended the loans to be repaid within a matter of weeks, because plaintiffs indicate that they
 12 considered the August 28, 2022 loan not “timely repaid” as of September 14, 2022. ECF No. 7 at
 13 6-7. It was not foreseeable at the time of contracting that defendants would be repaying plaintiffs
 14 at the 2024 valuation of the cryptocurrency. Accordingly, the court should decline to inflate the
 15 damages as plaintiffs suggest.

16 5. Punitive Damages/Attorneys’ Fees

17 Defendants ask in their declarations⁵ for punitive damages in the amount of \$362,717.82
 18 (accounting for attorney’s fees only) or \$646,408.25 (accounting for the present value of ETH
 19 and attorney’s fees). ECF No. 15-5 at 5. In order to obtain punitive damages under California
 20 law, a plaintiff must show by clear and convincing evidence that a defendant acted with malice,
 21 fraud, or oppression. See Cal. Civ. Code § 3294; Roby v. McKesson Corp., 47 Cal.4th 686, 712
 22 (2009). In order to determine whether punitive damages should be awarded, and the amount to be
 23 awarded the Court considers: (1) the nature of defendant’s acts; (2) the amount of compensatory
 24 damages awarded; and (3) the wealth of the defendant. Prof'l Seminar Consultants, Inc. v. Sino
 25 Am. Tech. Exch. Council, Inc., 727 F.2d 1470, 1473 (9th Cir. 1984).

26
 27 ⁵ These numbers, when considered as part of plaintiffs’ breakdown of their total damages
 28 request, do not add up to the asserted total \$1,113,818.65. Because the court finds punitive
 damages in any amount to be inappropriate, it is unnecessary to resolve arithmetic discrepancies.

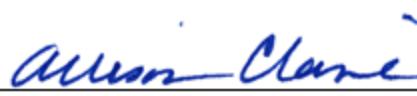
1 “[P]unitive damages are never awarded as a matter of right, are disfavored by the law, and
2 should be granted with the greatest of caution and only in the clearest of cases.” Directi Internet
3 Sols. Pvt. Ltd. v. Dhillon, 2013 WL 460319, at *6, n.7, 2013 U.S. Dist. LEXIS 15706 (E.D. Cal.
4 Feb. 5, 2013) (citing Henderson v. Security Pacific National Bank, 72 Cal.App.3d 764, 771
5 (1977)). The undersigned declines to recommend an award of punitive damages in this case.
6 Plaintiffs are “unaware of Taylor’s financial situation” but acknowledge that he will likely be
7 unable to pay a judgment. The compensatory damages to be awarded—the value of the loans
8 plus statutory interest and the agreed royalty payment—compensate plaintiffs for their losses.
9 There is no indication that punitive damages are necessary to deter defendants from engaging in
10 similar conduct in the future. For these reasons, the undersigned declines to recommend punitive
11 damages in this case.

12 **IV. Conclusion**

13 For all the reasons set forth above, it is HEREBY RECOMMENDED that plaintiffs’
14 motion for default judgment (ECF No. 15) be GRANTED, that plaintiffs be awarded \$403,897.91
15 in damages, and that the case be closed.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a
20 document should be captioned “Objections to Magistrate Judge’s Findings and
21 Recommendations.” Any response to the objections shall be filed with the court and served on all
22 parties within fourteen days after service of the objections. Local Rule 304(d). Failure to file
23 objections within the specified time may waive the right to appeal the District Court’s order.
24 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57
25 (9th Cir. 1991).

26 DATED: May 22, 2024


27 ALLISON CLAIRE
28 UNITED STATES MAGISTRATE JUDGE